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Issue Date: 06 October 2005

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In the Matter of

TROY KERSEY
Claimant
CONTAINER MAINTENANCE CORP./
SIGNAL MUTUAL INDEMNITY ASSN. LTD.
Employer/Carrier
And
DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS

Case No. 2004 LHC 00260
OWCP No. 6-191160

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Order Approving Attorney Fees

Claimant's attorneys, having successfully represented their client in the above-captioned matter, have petitioned for fees and costs amounting to $19,091.85, totaling 66.95 hours of work, representing 54.2 hours billed at a rate of $300.00 per hour for Gregory Camden, Esq., 11.5 hours billed at a rate of $200.00 per hour for Charlene Brown, Esq., 1.25 hours billed at a rate of $86.00 per hour for a paralegal, and $1,624.35 in costs. Claimant's attorneys claim their hourly rates are consistent with the hourly rates awarded other Savannah attorneys and reflect a component for the interest lost while waiting to collect the fee. In response, Employer challenges the petition as excessive when compared with the benefits obtained and objects to the hourly rate, the number of hours billed, and the costs claimed.

Hourly Rate Billed

In assessing the appropriate hourly rate in a contested fee situation, a number of factors need be considered, including the prevailing fees in the geographic market in which the services were rendered, the level of expertise exhibited by counsel, the efficiency demonstrated in dealing with the issues, and the overall complexity of the matter. 20 C.F.R. Section 702.132.

While Mr. Camden claims that $300.00 per hour is the appropriate billing rate in this case, Employer notes that Counsel's own firm shows in its "Staff Code Listing" that his hourly rate is $250.00 per hour effective as of September 1, 2004, and prior to that date, he billed at a rate of $225.00 per hour.

While neither party has submitted sufficient data to support a finding of a prevailing rate in the relevant market, a number of recent attorney's fee matters in Savannah indicate that $225.00 per hour is a reasonable fee rate for an experienced attorney in the average case. Indeed, no factors are evident which suggest that exceptional expertise was needed or that unique efficiencies were achieved in producing the favorable outcome eventually secured. Thus, Counsel's Petition fails to demonstrate that this matter involved especially complex legal issues, or presented particular difficulties in discovery or in dealing with the scope of the defense. 20 C.F.R §702.132(a); Pyles v. Atlantic Container Services, 2003 LHC 2793 (April 28, 2005); Selman v. National Container of Savannah, 2003 LHC 2233 (March 2, 2005) *See*, Edwards v. Todd Shipyard Corp., 25 BRBS 49 (1991),

Under such circumstances, I conclude that a fee rate of $225.00 per hour is appropriate for Mr. Camden's work in this case, and, in view of the foregoing considerations, it will be approved. The hourly rates charged by Ms. Brown and the paralegal are not challenged by Employer, and are also approved.

Number of Hours Billed

Before turning to the individual items challenged by the Employer, I should comment further on the correlation between the hourly rate an expert may command and the efficiencies he or she may be expected to achieve. In this instance, Counsel devoted 50.20 hours to Claimant's cause.

In general, an inverse relationship exists between the expertise claimed, as reflected in Counsel's hourly rate, and the number of hours billed. As the level of expertise increases, the number of hours it should take to prepare a case would be expected to decrease. Conversely, a novice in the field would be expected to require more time than an expert to study and prepare the same case. Thus, inherent in the expert's fee is the skill and knowledge which allows him or her to achieve the type of practice efficiencies which benefit the client or the party otherwise responsible for the client's bills.

In the usual situation in which the client pays the fee, the relationship imposes an important check on the attorney's pricing freedom. A client would not

expect, and would likely object, if an expert in the field billed for the same number of hours to complete a project as it would take an inexperienced junior associate. Yet, in the regulatory environment in which this case arises, the Claimant/client is not the party responsible for paying his attorney's fees. Rather, the opposing party is on the hook, and normal economic fee constraints are absent.

As the normal supply and demand curve demonstrates, as price approaches zero, demand approaches the infinite. To the Claimant in a Longshore case, the price of an attorney's services is zero. He is restrained by none of the economic forces that limit a non-subsidized client's demand for counsel's time. Since the claimant is not paying the fee for services he receives, the potential demand for service, as in a contingent fee situation, can mount considerably, and not all of that demand may be reasonable. If the attorney himself places no restraints on the client's demand for service under these circumstances, or if the attorney abuses the absence of such economic restraints by generating excessive hours, no real constraint, beyond the attorney's inherent endurance, exists at all.

Congress thus solved this dilemma by substituting a third party approval process for the usual market checks and balances which exist between an attorney and client. This alternative mechanism anticipates that essentially the same economic considerations that otherwise exist for a client paying an hourly rate also exist in the regulatory setting in which the service is essentially free to the client and someone else pays the fee. Reasonable consultation and communication is expected and the attorney is entitled to fair compensation for his necessary preparation, but the party responsible for paying the fee is entitled to the same types of constraints that the market would impose. *See also*, 20 C.F.R. Section 702.132

Nevertheless, Claimant's counsel must, at all times, provide services reasonably necessary to prepare adequately and present his client's case, and must prevail to earn his fee. In turn, the Employer is entitled to mount the defense it deems in its best interests; however, when an employer simply "stonewalls" a claim or pulls out all the stops vigorously defending a relatively small claim and the claimant prevails, claimant's counsel need not subsidize his client's case by accepting less than the fees generated by the dictates of his adversary's strategy and tactics. Accordingly, the circumstances of each case must guide the analysis.

Hours Expended by Charlene Brown and the Paralegal

Initially, it should be noted that 8.00 hours expended by Ms. Brown and the .75 hour billed by the paralegal are not specifically challenged by the employer, are reasonable, and are approved. Employer objects to .5 hours claimed by the paralegal for two telephone calls to the client, alleging that the descriptions of these calls are too vague and represent improper minimum billing for telephone calls in quarter hour increments. It also objects to 3.5 hours billed by Ms. Brown to review the file (one hour) and conduct research (2.5 hours) on October 18, 2004, the day she drafted a brief.

Employer contends that Ms. Brown's entries are also too vague and that her research time is excessive. These criticisms of Ms. Brown's entries are unwarranted. Considered in context, it is clear that she reviewed the file and conducted research related to her preparation of a draft of the brief on October 18, 2004, and the 2.5 hours she spent researching hearing loss issues clearly is not excessive. Accordingly, the 11.5 hours claimed by Ms. Brown will be approved.

The two calls billed at .25 hours apiece by the paralegal for contacts with the client present a different problem. While I find them sufficiently descriptive under the circumstances, they do represent a unit billing practice, which the Fee Petition itself concedes. Thus, Employer insists that under Ingalls Shipbuilding, Inc. v. Director, No. 94-40236 (5th Cir. 1995) (unpublished precedent, *See*, 5th Cir. Rule 47.5.3), ¼ hour unit billing is improper. In Biggs v. Ingalls Shipbuilding, Inc., 27 BRBS 237 (1993), however, the Benefits Review Board ruled that the body awarding a fee may determine whether quarter-hour billing is appropriate, and the Board's Rules published at 20 C.F.R § 802.203 (d)(3) revised April 1, 2004, still provide that fee petitions must include the "Number of hours, in ¼ hour increments, devoted by each person who performed the service…." OALJ has implemented no rule governing incremental billing.

This cases arises within the jurisdiction of the Eleventh Circuit, and in the absence of an Eleventh Circuit decision addressing the issue, rulings of the Fifth Circuit are persuasive.[1] It thus appears that unless Counsel can demonstrate a greater expenditure of resources, 1/8 hour or 7.5 minutes is all the court would allow for each of these calls. Yet, Counsel advises that his computer will not accept an entry in .125 or 1/8 hour increments and, accordingly, he has rounded up

[1] The Eleventh Circuit, in Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), adopted as precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.

to .13 or 7.8 minutes for very brief matters and uses .25 or 15 minutes for multiple-page letters and drafts. Counsel's explanation is reasonable; and applying it to the two calls by the paralegal, yields .13 hours or 7.8 minutes per call which will be allowed.

Hours Expended by Gregory Camden

As noted above, Mr. Camden expended 54.2 hours working on this matter, and Employer specifically objects to 35.75 of those hours as vaguely described, duplicative, or excessive. Employer's specific objections are considered below.

Employer objects to one hour billed on November 11, 2003, for the preparation of discovery requests on the ground that the documents represented standard forms which required insertion of only the Claimant's name and date of loss. Counsel responds that the hour billed is appropriate, but he would accept the amount that Employer's counsel would bill for similar discovery, and Employer's counsel advised that he would charge the minimum for these requests. Under these circumstances, .75 hours are disapproved, and the minimum of .25 hours for the minor work on multiple forms will be approved.

Employer challenged as vague the .5 hours Counsel claimed to review medical records on December 9, 2003. Counsel subsequently explained that this item related to a review medical records in connection with a discussion with Dr. Hecker who was then a potential witness. Employer demands further descriptions of the medical records; however, as clarified, I find this item sufficiently described and it is approved.

Employer next objects to two letters dated December 19, 2003 and January 7, 2004 respectively, and billed at .13 hours each. Employer alleged that these were duplicate items; however, Counsel denied that allegation and noted that they were dictated on different days and typed on different days by different members of his staff. Employer, however, finds this explanation unpersuasive, arguing that the contents should have been consolidated in a single letter and billed at .13 hours. Employer's suggestion to the contrary notwithstanding, there is no indication that the chronology of these letters represents an effort to the pad the bill by 7.8 minutes. The letters were dictated when the issues arose and the time they represent is approved.

Employer objected to .5 hours billed on January 20, 2004, as a duplicate entry of the .5 hours billed on December 16, 2003. Counsel explained that this

entry was for reviewing discovery submitted by the employer on January 12, 2004, and consequently is duplicative of nothing billed on December 16, 2003. Its first objection answered, Employer argues in reply that it is nevertheless excessive, because "it does not take 30 minutes to review discovery requests" then bill separately for responding to those requests. Contrary to the Employer's assertions, it is not unusual for counsel to review the nature and scope of a discovery request before attempting to locate and produce responsive documents and to review, consider, and think about the interrogatories, before preparing the answers. These items are approved.

Employer next turns its attention to a number of client contacts, challenging each as too vaguely described to determine whether they were "reasonably necessary." These include telephone calls at various times by the paralegal and by Counsel to the client. The calls took place on January 22, 2004, .5 hours; February 9, 2004, .25 hours; June 16, 2004, .25 hours; July 14, 2004, .25 hours; July 28, 2004, two calls lasting .25 hours each; May 25, 2004, three calls lasting .25 hours each; June 13, 2005, two calls lasting .25 hours each. Counsel responds that it would be ethically inappropriate to provide the level of detail Employer demands in describing these communications

Counsel has a professional obligation to involve the client in the development of the case and keep him reasonably and adequately informed of the progress and status of the matter. As I discussed in Knight v. Atlantic Marine, Inc., 2002 LHC 219, (ALJ, March 14, 2005)(Order Re Atty Fees), however, client communications, on occasion, can become excessive. In Knight, for example, the petition claimed in excess of $350,000.00 in fees and costs, involved nearly 175 hours of client communications, and included hundreds of client contact entries. Under such circumstances, the Order examined the attorney/client communications in detail and concluded that counsel must exercise reasonable restraint in satisfying the client's demand for his time or absorb excessive calls within his overhead.

In this instance, in contrast, over a period of eighteen months, eleven client contact calls were conducted, totaling three hours, the longest of which lasted one half hour. Nothing excessive is demonstrated by this pattern of communications; however, to the extent they represent ¼ hour incremental billing, adjustments must be made. Eight of the ten calls billed a ¼ hour will, therefore be reduced to .13 hours each, and, as reduced, they will be approved. Two of the calls, amounting to .5 hours, were already discussed in the context of the calls handled by the paralegal, and will not be reduced from Mr. Camden's hours. The rest of the calls are sufficiently described to permit approval.

Employer objects to the billing of travel time at the same rate as skilled attorney time. Initially, it should be noted that Board has rejected claims for local travel as overhead while approving claims for more lengthy trips. *Compare*, Neeley v. Newport News Shipbuilding & Dry Dock Co., 19 BRBS 138 (1986); Ferguson v. Southern States Cooperative, 27 BRBS 16 (1993) *with* Harrod *v.* Newport News Shipbuilding & Dry Dock Co., 14 BRBS 592 (1981). The travel in this case is not overhead.

Still, Employer questions several specific travel items including entries on: February 15, 2004, 1 hour; February 16, 2004, 1 hour; July 28, 2004, 2 hours; July 29, 2004, 2 hours; and July 30, 2004, 6 hours. Counsel responded that he will accept whatever hourly rate the Employer's counsel bills its client for travel time. Employer replied: "the hourly rate of its attorneys are substantially lower than $300.00 or even $225.00." This may be true, but the issue the Employer purported to address was whether its attorneys are "compensated for travel time at the same rate" they customarily charge for their skilled attorney time, and the response cagily avoids that question. Counsel's travel time will, therefore, be approved at his approved hourly rate.

Employer also objected to Counsel's travel time on the ground that he worked on other cases during the 6-hour travel on July 30, 2004 and has been compensated for that travel in other cases. Although Employer argues that Counsel failed to address its objection, Counsel explained in his original Petition how he allocated his travel time among his different clients. He explained that it takes about 8 hours to fly or drive from Norfolk, Virginia to Savannah, Georgia. On July 26, 2004, he flew to Savannah for depositions in two different cases. Counsel did not bill this employer for the travel time to Savannah. On July, 28, 2004, he drove two hours from Savannah to Jacksonville for the hearing and two hours back to Savannah July 29, 2004. On July 30, 2004, he flew back to Norfolk charging Employer six hours of travel time.

Under these circumstances, Employer correctly objects to the allocation of six hours travel time for the trip back to Norfolk from Savannah. Since the trip to Jacksonville from Savannah was attributable to this matter, Counsel correctly billed Employer for that portion of the trip; however, the trip from Norfolk to Savannah was necessitated not just by this matter, but two cases Counsel was then preparing. While he did not bill employer for the travel time to Savannah, he incorrectly billed it for a 6-hour trip from Savannah to his home. Since it appears

that portion of his travel involved work for three clients, one-third of counsel's travel time home from Savannah, or 2 hours, will be approved.

Employer objects to the hour Counsel billed on February 16, 2004, to review the file in preparation for Claimant's deposition. Employer notes that Counsel billed another hour on that date "undoubtedly" to confer about the deposition, and, in the Employer's view, two hours of preparation time for a deposition is excessive. Yet, Counsel has provided an adequate explanation of this entry, and I am unable to conclude that it is excessive.

Preparation for a deposition is not a one-step process. Reviewing the matters a client may be required to address during a deposition before attempting to prepare the client for the experience is prudent practice. Employer's suggestions to the contrary are misplaced. Further, the brevity of the deposition is not the measure of the preparation time needed to get ready for it. To the contrary, the brevity of the deposition may be directly attributable to counsel's diligence in preparing his witness beforehand. This hour is approved.

On February 18, 2004, Counsel billed .25 hours for editing Claimant's response to discovery. Employer objects that the paralegal drafted and edited these responses and Counsel is, therefore, double billing for the same task. Counsel responds that his paralegal did indeed draft the responses, but he reviews them before they are mailed.

Failure to respond adequately to proper discovery requests can lead to the imposition of sanctions and should not be taken lightly. Under such circumstances, it seems entirely prudent for any attorney to review the work of a paralegal who is assigned the task of preparing answers and responses to the Employer's discovery demands. The .25 hours billed for this service is approved.

Employer next objects to .5 hours billed on February 23, 2004, to review medical records from Dr. Zoller, because Counsel failed to specify the number of pages he reviewed, and, in any event, Employer considers 30 minutes to review them excessive. The time it takes to review an expert's report is not governed by the number of pages the report contains. The complexity of the subject matter and the implications it raises for the development of the client's case may require more than cursory perusal.

Indeed, Claimant relied on an audiogram dated 12/6/02, which revealed a 3.75% monaural hearing loss in the right ear, and considering the etiology of the

hearing loss, Dr. Zoller, in a report dated December 12, 2002, noted that Claimant "has had much loud noise exposure (work and guns)." Dr. Zoller diagnosed tinnitus and high frequency nerve loss, and, on January 27, 2004, he rated Claimant's right ear impairment at 3.75%, which he to "prior loud noise exposure," involving both gun and workplace noise. Considering matters he addressed and the importance of Dr. Zoller's records to Claimant's case, I conclude that the half hour Counsel devoted to this material was not excessive.

Employer objects that Counsel billed .25 hours to receive and review a deposition transcript on March 16, 2004, and one hour to review medical records on June 27, 2004. The fifteen minutes Counsel spent reviewing the transcript of his client's deposition is approved. The one hour he devoted to reviewing medical records supplied to him by employer is reasonable and approved in light of Counsel's withdrawal of the 1.25 hours of review time claimed on July 14, 2004.

Counsel billed 1 hour, which the employer deems excessive, to the review the file on July 18, 2004, in preparation for a motion to exclude IME evidence he drafted the next day. Counsel also billed at 1 hour for drafting the motion which Employer initially challenged but later accepted. Thereafter, Counsel billed .5 hours on July 20, 2004, for reviewing the IME records submitted by the Employer and the Employer deems this excessive. In moving to exclude evidence prepared by an IME is helpful to know what information from the IME a file may contain, and one hour is not excessive under the circumstances. Nor is one-half hour excessive to review the report of an independent medical examination, considering the nature of the material and the implications to the client's case.

Counsel billed 2 hours to edit a brief on September 4, 2004, Counsel agrees this is an erroneous entry and has withdrawn it.

Employer next objects to the time counsel devoted to preparation of Claimant's brief. Specifically, it challenges four hours billed on October 18, 2004, to review the file, (one hour), research, (2.5 hours), and .5 hours to review exhibits, additional research on October 20 (.5 hours), editing the brief on October 22, (2 hours), and reviewing the file on December 17, 2004 (.25 hours).[2] Employer argues that Counsel review of the file was unnecessary and excessive, the review of exhibits was duplicative of the review performed on July 23, 2004, the research was vague and excessive, and the editing of the brief took too long. Total brief

[2] The one hour file review and the 2.5 hours of research on October 18, 2004, was claimed by Ms. Brown and previously discussed. *See*, pg.4, *supra*. It is discussed here to place in context the entire time expended on the brief.

preparation time was 6.75 hours. I have reviewed each of Employer's objections, and with the exception of the 2 hours claimed on September 4, 2004, which Counsel withdrew, I find them lacking in merit.

When a brief is drafted three months after an attorney reviews exhibits for other reasons, he had better review the exhibits again when he drafts his brief. Although Employer may insist otherwise, it does not constitute billing abuse for the drafting process to involve evidence review, legal research, drafting, and additional evidence review, legal research and drafting as the brief writing process progresses and the issues crystallize. One can always hope that an opponent may will rely on memory in citing the record and shoot from hip in citing precedent, but it is hardly objectionable when the an attorney takes the time to prepare a thorough submission. Having reviewed Counsel's entries for preparing the brief, I find them reasonable, necessary and billable.

The entry of .25 hours on December 17, 2004, to "diary" the file while the matter was pending decision is, however, another matter. Counsel has not shown that a review of the file was necessary at that time, and it is disapproved.

Employer next objects to the half hour Counsel spent on June 13, 2005 reading the decision entered in this matter. Counsel represents that he read it twice to determine if it contained any issues he needed to appeal or mistakes he needed to move to correct. Employer, however, stands by its objection that the half hour is excessive. The decision was 8 pages in length, but included a detailed discussion of the work history, witness credibility, and medical and legal issues. Thirty minutes to thoroughly review it is not excessive.

Finally, Counsel seeks an additional four hours for file review and preparing his response to the Employer's objections to his fee petition. Employer challenges this on the ground that Board decisions preclude an attorney from billing for the preparation of his fee petition. Employer correctly perceives that an attorney may not bill for preparing his fee petition, but it mistakenly concludes that he may not bill for the time he invests to defend it. Defending the petition is billable. *See*, King v. Atlantic Dry Dock Co., 2002 LHC 1926,1926; Byrum v. Newport News Shipbuilding & Dry Dock Co., 14 BRBS 833 (1982); Jarrell v. Newport News Shipbuilding & Dry Dock Co., 14 BRBS 833 (1982); Morris v. California Stevedore & Ballast Co., 10 BRBS 375 (1979. The four hours Counsel claims for defending the petition is approved.

In summary, Counsel billed 54.20 hours of which 9.5 hours have been disapproved, and 44.7 hours are approved at a rate of $225.00 per hour, totaling $10,057.50 for Mr. Camden. Ms. Brown billed for 11.5 hours which were approved at a rate of $200.00 per hour, totaling $2,300.00, and the paralegal billed for 1.25 hours of which 1.13 hours were approved at a rate of $86.00 per hour, totaling $97.18. As reduced, the fees total $12,454.68.

Success Achieved

Citing Hensley v. Eckerhart, 461 U.S. 424 (1983), employer argues that Counsel succeeded only in obtaining benefits for a 3.75% monaural hearing loss totaling 1.9 weeks of compensation based upon his average weekly wage of $1,007.64, plus penalties. As a consequence, Employer argues that counsel's fees, even as reduced, are markedly disproportionate to the benefits achieved. Employer insists further that the amount of benefits awarded, including future benefits, is a valid consideration in awarding a fee. Muscella v. Sun Shipbuilding and Drydock Co., 12 BRBS 272 (1980); White v. Newport News Shipbuilding & Drydock Co., 633 F.2d 1070 (4th Cir. 1980); 4 BRBS 279; Roach v. General Dynamics Corp., 15 BRBS 448 (1984). Employer thus demands recognition of the fact that Claimant's award was indeed meager compared with amount of fees his attorneys will earn, and they are correct.

In this instance, the benefits awarded were indeed minimal, but the work counsel performed to secure the award was considerable, and Claimant proved he was entitled to the benefits he received. Thus, as meager as Claimant's payout might appear, the fact remains that much of the expense was dictated by the Employer's litigation strategy. Invoking its rights to the fullest, it declined to pay benefits; and Claimant, invoking his in response, litigated his entitlement to the meager, but statutory, benefits the Act provided in this instance.

I do not criticize the employer for vigorously demanding that Claimant fully prove his case, but having done so, Employer is not then free to insist that Claimant's counsel absorb the cost generated by the litigation demands imposed by his adversary's strategy. Under these circumstances, and considering the fees claimed in this proceeding in light of the level of success achieved, the principles articulated by the Supreme Court in Hensley v. Eckerhart, 461 U.S. 424 (1983) seem applicable. *See*, Ingalls Shipbuilding, Inc., v. Director, 46 F.3d 66 (5th Cir. 1995); George Hyman Constr. Co. v. Brooks, 963 F.2d 1532 (D.C. Cir. 1992); General Dynamics Corp. v. Horrigan, 848 F.2d 321 (1st Cir. 1988); Rogers v.

Ingalls shipbuilding, Inc., 28 BRBS 89 (1993). We shall see how Hensley handles this situation.

Hensley Factors

In Hensley, the successful attorneys in a civil rights case sought fees amounting to approximately $150,000 and enhancements of 30 to 50 percent, for a total award of somewhere between $195,000 and $225,000. The high court observed that the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate is the most useful starting point for determining the amount of a reasonable fee, but the product of hours times rate does not end the inquiry. As such, under circumstances in which a Claimant achieves limited success, the Court's decision poses two questions which must be addressed: "First, did the plaintiff fail to prevail on claims that were unrelated to the claims on which he succeeded? Second, did the plaintiff achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award?" Hensley at 435. Providing further guidance, the Court ruled that when claims are related or involve a common core of facts, making it difficult to divide the hours expended on a claim-by-claim basis, the trier of fact "should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." Hensley at 436.

For the Claimant who has achieved partial or limited success, Hensley cautions that the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount. The Court observed that: "This will be true even where the plaintiff's claims were interrelated, nonfrivolous, and raised in good faith…. The most critical factor is the degree of success obtained." Hensley at 437. The question is how to apply the Hensley principles in a fair and equitable way; and to a large extent, the Court turned to the sound discretion of the trier of fact: "There is no precise rule or formula for making these determinations," the Court observed, emphasizing that: "… the district court has discretion in determining the amount of a fee award.... When an adjustment is requested on the basis of either the exceptional or limited nature of the relief obtained by the plaintiff, the district court should make clear that it has considered the relationship between the amount of the fee awarded and the results obtained." Hensley at 437-38.

To further illustrate the clarity it seeks, the Supreme Court reversed the award entered by lower court in Hensley:

> "…because the District Court's opinion did not properly consider the relationship between the extent of success and the amount of the fee award. The court's finding that 'the [significant] extent of the relief clearly justifies the award of a reasonable attorney's fee' does not answer the question of what is 'reasonable' in light of that level of success. We emphasize that the inquiry does not end with a finding that the plaintiff obtained significant relief. A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole." Hensley at 439-40. (footnotes omitted).

Applying Hensley

Now the initial issue is not whether the trier of fact found in Claimant's favor on each of several related claims. The first Hensley question is whether the Claimant failed "to prevail on claims that were unrelated to the claims on which he succeeded." The answer here is "no," Claimant did not fail to prevail on claims that were unrelated to the claims on which he succeeded. Kersey claimed a 3.75% monaural work related, noise-induced hearing loss, totaling $1,276.34 plus $127.63 in penalties, and he prevailed on every issue. Consequently, he received the award he sought plus penalties. He did not win "substantial" relief in terms of the contested claim, he won full relief. Counsel has thus overcome the hurdle of the first Hensley question.

The second Hensley question is whether the Claimant achieved "a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award?" Hensley at 435.

In this proceeding, Claimant's entitlement to any relief was denied by the Employer. Considering the fees sought "in comparison to the scope of the litigation as a whole," Claimant won everything he sought. Hensley at 439-40. The fact that it amounted to a relatively small claim with no future compensation does not negate the vigor with which it was defended, and the necessity of the work invested by Counsel to see Claimant's case through to conclusion in achieving the results obtained which approximated 100% of the amount claimed. *See* Hensley at 437-38.

Accordingly, the product of hours reasonably and necessarily expended on the litigation as a whole, as determined above, times the reasonable hourly rate approved above is, in this instance, the appropriate method of calculating the attorneys' fees in this case. As the Court in Hensley decreed, "A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole." Hensley at 439-40. Considering the nature of the claim and the scope of the litigation, the victory achieved here was not limited in any way, and, accordingly, Hensley does not justify limiting the fee in this type of situation. Hensley at 437.

Costs

Counsel seeks recovery of costs described as reasonable and necessary totaling $1,624.35. These costs include such items as transcript and witness fees, travel expenses allocated between four clients, ¼ of which is billed here, a medical report, and computer research. The access to computer research, costing $19.74 in this instance, functioned just as those most ancient of relics, actual law books, did in the past, and is disallowed. The cost of the books to the firm was non-billable overhead, and access costs for computer research is no different. The rest of the costs appear reasonable, necessary, and appropriate under the circumstances, and are approved. Accordingly;

ORDER

IT IS ORDERED that Employer pay to Claimant's attorneys the sum of $1,604.61 for cost incurred and $12,454.68 for services rendered to the Claimant.

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Stuart A. Levin
Administrative Law Judge